

CAITLIN CLARKSON PEREIRA;	:	SUPERIOR COURT
	:	
<i>Petitioner-Appellant,</i>	:	JUDICIAL DISTRICT OF
	:	FAIRFIELD
v.	:	
	:	AT BRIDGEPORT
STATE ELECTIONS ENFORCEMENT	:	
COMMISSION;	:	
	:	
<i>Respondent-Appellee.</i>	:	MAY 17, 2019

PETITION FOR ADMINISTRATIVE APPEAL

“Running for elected office is one of the most important civic activities in which a citizen can engage.” SEEC Advisory Opinion No. 76-17 (1976).

1. For decades, Connecticut citizens running for elected office used campaign funds to pay for childcare whenever a campaign activity created a need for childcare expenses, the expenses were reasonable, and were fully disclosed.

2. However last month the State Elections Enforcement Commission (“SEEC”) decided that once candidates qualify for Connecticut’s public campaign finance system, they may never use campaign funds for childcare under any circumstances.

3. SEEC’s decision, Declaratory Ruling 2019-02 (Apr. 3, 2019), is unconstitutionally discriminatory against women in effect without serving any legitimate purpose; based on legal errors interpreting Conn. Gen. Stat. § 9-607(g); in excess of its statutory authority under Conn. Gen. Stat § 9-706(e); and arbitrary and capricious. It should be reversed under Conn. Gen. Stat. § 4-183.

PARTIES, JURISDICTION, & AGGRIEVEMENT

4. SEEC is a five-member commission established in 1974 to investigate possible violations of Connecticut's election laws. Since 2006, SEEC has administered the Citizens' Election Program ("CEP"), a public campaign finance program. In recent elections, virtually all successful candidates for elected office in Connecticut have participated in CEP.

5. Caitlin Clarkson Pereira is an author, activist, and higher education professional employed at Southern Connecticut State University. Caitlin was raised in Fairfield, where she lives with her daughter and serves on her party's town committee.

6. Caitlin registered with SEEC as a candidate in December 2017 to challenge the incumbent State Representative for the 132nd House District. She was unopposed within her party and in May 2018 received her party's nomination at convention by unanimous vote.

7. Also in May 2018, in response to a petition from a candidate for Congress, the Federal Elections Commission ("FEC") approved the use of campaign funding for childcare costs. FEC AO 2018-06 (May 11, 2018). FEC concluded "that the child care expenses described in [the candidate's] request, to the extent that such expenses are incurred as a direct result of campaign activity,

would not exist irrespective of [her] election campaign, and thus may be permissibly paid with campaign funds.”

8. Caitlin applied to SEEC to qualify for CEP in June. SEEC approved her application, and on July 19, disbursed a \$28,150 grant to her campaign committee. In accordance with an affidavit filed with her application Caitlin swore to abide by a prohibition on raising or spending any additional private funds to advance her campaign once her grant was approved. Conn. Gen. Stat. § 9-703.

9. The choice between making a difference by being there for bedtime or making a difference by way of the ballot box is one of the thorniest choices a loving parent considering a run for office can make. The expression “it takes a village” stems from the reality that even the most devoted parents have a crucial and ongoing need for a robust and thriving support network. Allowing campaigns to cover reasonable childcare expenses is therefore necessary for political campaigns to be a viable form of civic participation for parents with young children.

10. The demands of a candidacy for elected office required Caitlin to spend an increasing amount of money on childcare from the beginning of her campaign in the spring of 2018. It became clear to Caitlin that meeting the needs of her very young child and her fledgling campaign would be close to impossible without childcare.

11. Research and common experience agree that face-to-face contact with the candidate – knocking on doors – is the most effective form of campaigning. Caitlin therefore had no choice but to turn, for the sake of her daughter and her campaign, to paid childcare in order to conduct certain campaign activities. Childcare was necessary for Caitlin’s campaign.

12. To relieve some of the increased time and financial burdens directly caused by her campaign, Caitlin asked SEEC, in a phone conversation with a staff attorney, whether she could use campaign funds for reasonable childcare costs incurred solely because of her campaign (distinguishing such childcare costs from, e.g., childcare for business hours when Caitlin was at work at Southern).

13. SEEC told Caitlin that no one had ever asked whether CEP grant funds could be used for childcare costs. It asked Caitlin to submit her request in writing. Caitlin submitted a written request to SEEC on July 31, within twelve days of receiving the CEP grant.

14. SEEC denied Caitlin’s request. In a document titled “Opinion of Counsel 2018-05” dated August 9, SEEC said “CEP funds may not be used to pay for a candidate’s childcare costs,” preventing Caitlin from seeking reimbursement for the childcare she needed because of her campaign.

15. Unable to pay for childcare using campaign funds, Caitlin was forced to pay more for childcare than she had envisioned or prepared for financially in

running for office. Caitlin was prevented from participating in campaign events and activities or had to bring her young daughter, harming her electoral prospects and inhibiting her speech and expressive activity. Caitlin was needlessly forced, on many occasions, to choose between her campaign's needs and her family's needs. Her campaign for state representative and her wellbeing and effectiveness as a mother and a citizen were both harmed.

16. On October 19, Caitlin submitted a Declaratory Ruling Petition to SEEC seeking reconsideration of its "Opinion of Counsel." Caitlin's Declaratory Ruling Petition, attached as Exhibit A, identified errors of law in SEEC's Opinion of Counsel 2018-05 and sought a declaratory ruling that childcare costs were a permissible use of campaign funds for CEP candidates.

17. At the time of Caitlin's Declaratory Ruling Petition, SEEC had no procedures in place for handling a request like Caitlin's for a declaratory judgment. In response to her request, SEEC issued an order setting forth new procedures for researching the issue, drafting a declaratory ruling, and facilitating notice-and-comment. SEEC's newly-established procedures pushed consideration of the issue well beyond the conclusion of the 2018 election.

18. Caitlin vigorously pursued her administrative remedies within SEEC both before and after the 2018 election. Before issuing its final decision, SEEC issued a "proposed ruling" and invited comments. All of the comments, including

a letter from FEC Chair Ellen L. Weintraub, supported Caitlin's request and criticized SEEC's proposed ruling.

19. On April 3, 2019, SEEC issued the decision that is the subject of this appeal. SEEC's decision affirmed its earlier Opinion of Counsel and proposed ruling and constituted a final decision under Conn. Gen. Stat. § 4-183. Caitlin has therefore exhausted her administrative remedies.

20. SEEC's decision prevents Caitlin from seeking reimbursement for childcare costs directly caused by running for office, unless she delays participation in CEP or raises all campaign funds through private donations. SEEC's decision has therefore imposed and will impose severe burdens on Caitlin's time, finances, political speech and expression, and civic participation. Unless reversed, the burdens of SEEC's decision will make it impracticable or impossible for Caitlin to run for office in the 2020 election. Reversing SEEC's decision would relieve its burdens on Caitlin's time, money, political speech and expression, and civic participation, and meaningfully enable Caitlin to run for office in the 2020 election. Caitlin is therefore aggrieved by SEEC's decision and has standing to appeal.

STANDARD OF REVIEW

21. This appeal presents issues of law of first impression in Connecticut not previously subjected to judicial scrutiny or to a governmental agency's time-

tested interpretation. As a result, the appropriate standard of review is *de novo*.

Chairperson, Connecticut Med. Examining Bd. v. Freedom of Info. Comm'n, 310 Conn. 276, 282 (2013).

GROUND FOR REVERSAL

22. SEEC erred, first, because its interpretation of the statutes and regulations would violate Caitlin Clarkson Pereira's rights under the Fourteenth Amendment to the United States Constitution and Article First, § 20 of the Constitution of the State of Connecticut because of its discriminatory impact on women. Women tend to shoulder a greater share of family childcare responsibilities in the United States and in Connecticut and spend more time on childcare than men. As of 2019, only a third of Connecticut legislators are women. SEEC's decision labels work more often performed by women as "personal," reinforces gender stereotypes, discourages women from running for office, has a disparate impact on women, and serves no legitimate purpose.

23. SEEC's decision was also arbitrary, capricious, and an abuse of discretion because it was illogical, unreasonable, and contrary to public policy. Virtually all public officeholders and successful candidates for elected office in Connecticut participate in CEP. Under SEEC's decision, however, candidates would be required to delay or forego participation in CEP in order to use campaign funds for childcare expenses. SEEC's interpretation allows campaign

funds to be used for childcare, but only by candidates before they apply for CEP or by candidates who solely raise private donations. SEEC's arbitrary interpretation runs counter to its and CEP's purposes, including the goal of encouraging greater and more meaningful electoral participation, and would violate the public policy of the State of Connecticut by negatively affecting women and families with young children.

24. SEEC further erred as a matter of law by interpreting "any . . . necessary campaign or political expense," Conn. Gen. Stat. § 9-607(g)(2)(Z), to exclude necessary childcare expenses.

25. SEEC further erred as a matter of law by interpreting its regulation's requirement that campaign expenses "directly further" a candidate's election, Regs. Conn. State Agencies § 9-706-1(a), to prohibit childcare expenses under all circumstances. Although certain childcare expenses may not "directly further" a candidate's election, many reasonable childcare expenses do, just like any other necessary campaign expense.

26. SEEC further erred as a matter of law by interpreting the prohibition on "personal support or expenses," Regs. Conn. State Agencies § 9-706-2(b), to prohibit childcare expenses under all circumstances. SEEC erred because childcare is not "personal support or expenses." *Id.* SEEC regulations limit that

term to “personal items . . . used for campaign-related purposes,” *id.* Childcare is not a “personal item.”

27. SEEC further erred as a matter of law because, even if some childcare expenses may qualify as “personal support or expenses” under certain circumstances, some reasonable childcare expenses are no more “personal” than, for example, transportation services, and provide no more “personal benefit” to the candidate than transportation services. But SEEC and the statutes do not hold transportation services that enable campaign activity to be “personal support or expenses.” SEEC’s holding that all childcare expenses are “personal support or expenses” that render a “personal benefit” was therefore arbitrary, capricious, and an abuse of discretion.

28. SEEC further erred as a matter of law by interpreting Conn. Gen. Stat. § 9-706 to authorize rules “much stricter,” Decl. Ruling 2019-02 at 1, than Conn. Gen. Stat. § 9-607(g) for candidates participating in CEP. *See also id.* at 2 (“[T]he rules are stricter than what is laid out in General Statutes § 9-607 (g) alone.”). Although Conn. Gen. Stat. § 9-706 does authorize SEEC to adopt CEP regulations “on permissible expenditures under subsection (g) of section 9-607” for CEP candidates, the text provides no authority to define “permissible expenditures under subsection (g)” as stricter for CEP candidates, let alone as

“much stricter” and arbitrarily applying to childcare. SEEC’s interpretation therefore exceeds its statutory authority.

RELIEF REQUESTED

WHEREFORE, the petitioner, Caitlin Clarkson Pereira, requests that this Court provide the following relief:

- A. Sustain this appeal;
- B. Reverse and vacate SEEC’s decision, Ruling 2019-02, holding: “For candidates participating in the CEP, campaign funds may be spent on such costs up until the campaign has been approved to receive a clean elections grant from the CEF. Once a committee is approved for a grant, monies may not be spent on childcare.”;
- C. Render a judgment that modifies SEEC’s decision to permit candidates participating in the CEP to spend campaign funds on child care costs on the same conditions required of candidates using privately-raised donations;
- D. Attorneys’ fees and other costs of the action pursuant to Conn. Gen. Stat. § 4-184a; and
- E. Such other and further relief as the Court deems just and proper.

THE PETITIONER

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